

Mayers v Calamaras Realty Corp.

2019 NY Slip Op 33919(U)

March 31, 2019

Supreme Court, New York County

Docket Number: 157347/2015

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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DOE MAYERS,

Index No. 157347/2015

Plaintiff

- against -

DECISION AND ORDER

CALAMARAS REALTY CORP.,

Defendant

-----X

LUCY BILLINGS, J.S.C.:

Plaintiff commenced this action to recover for injuries to various parts of her body suffered February 22, 2015, when she slipped and fell on ice on defendant's premises at 2101 49th Avenue, Queens County. Plaintiff's attorney Apicella & Schlesinger now moves to enforce a settlement between plaintiff and defendant recited on the record December 5, 2019, and reflected in the court's order signed on that date. C.P.L.R. § 2104.

I. THE SETTLEMENT AGREEMENT

On December 5, 2019, plaintiff, her attorney Philip Schlesinger of Apicella & Schlesinger, and defendant, represented by its attorney Richard Walker of Weiner, Millo, Morgan & Bonanno, LLC, attended a Status Conference where they agreed to settlement terms, which the parties memorialized on the record and the court memorialized in its order. The agreement by both plaintiff and defendant embodied all the settlement's material terms. (1) Defendant would pay and plaintiff would accept

\$100,000.00 in full settlement of her claims for any injuries she suffered February 22, 2015, from her fall on defendant's premises, whatever those injuries were. (2) Out of that sum she would pay her expenses in this action, plus one third of the remainder to her attorney, but if defendant paid the settlement in two checks, to plaintiff and to her attorney, her attorney agreed to waive recovery of the expenses the firm had advanced. (3) She released defendant from further liability for any claim arising from her injuries February 22, 2015, at 2101 49th Avenue, Queens County. The parties also agreed that plaintiff would provide a written release.

The attorneys and the court reviewed the terms with plaintiff to assure that she fully understood them, had consulted with anyone with whom she wanted to consult, was unimpaired by alcohol, drugs, or medication, and agreed to those terms. She repeatedly affirmed, under oath, that she was clear headed, did not want to consult further with anyone, understood how the \$100,00.00 would be allocated and that it was for all the injuries she suffered from her fall February 22, 2015, and accepted the \$100,00.00 in full settlement of those claims.

II. THE SETTLEMENT ON THE RECORD DECEMBER 5, 2019, IS BINDING AND ENFORCEABLE.

After plaintiff's attorney mailed a written release to plaintiff for her to sign, she refused to sign it and informed him that the \$100,000.00 was not enough to compensate her for all the injuries she believed, after consulting with her physician, that she had incurred from her fall February 22, 2015, in

particular a shoulder injury. Nevertheless, since the settlement agreement recited on the record December 5, 2019, transcribed into a writing, and memorialized by the court's signed order, includes all material terms, and those terms are definite, the agreement binds the parties as an enforceable stipulation of settlement. C.P.L.R. § 2104; Express Indus. & Term. Corp. v. New York State Dept. of Transp., 93 N.Y.2d 584, 589-90 (1999); Barclay v. Citibank, N.A., 136 A.D.3d 551, 551 (1st Dep't 2016); Argent Acquisitions, LLC v. First Church of Religious Science, 118 A.D.3d 441, 443-44 (1st Dep't 2014); Sterling Fifth Assoc. v. Carpentille Corp., Inc., 10 A.D.3d 282, 283 (1st Dep't 2004).

When a party attests to a settlement agreement, it constitutes a binding contract subject to the principles of contract interpretation. Barclay v. Citibank, N.A., 136 A.D.3d at 551; Kowalchuk v. Stroup, 61 A.D.3d 118, 123 (1st Dep't 2009); Hotel Cameron, Inc. v. Purcell, 35 A.D.3d 153, 155 (1st Dep't 2006).

Thus, as long as the recitation on the record included all essential terms of the agreement and expressed the parties' intent to settle this action, that record is binding and enforceable without any more formal written agreement, Trolman v. Trolman, Glaser & Lichtman, P.C., 114 A.D.3d 617, 618 (1st Dep't 2014); Options Group, Inc. v. Vyas, 91 A.D.3d 446, 447 (1st Dep't 2012); Kowalchuk v. Stroup, 61 A.D.3d at 123; Bed Bath & Beyond Inc. v. IBEX Constr., LLC, 52 A.D.3d 413, 414 (1st Dep't 2008), even if the parties anticipated signing a more formal agreement. Trolman v. Trolman, Glaser & Lichtman, P.C., 114 A.D.3d at 618;

Kowalchuk v. Stroup, 61 A.D.3d at 123; Bed Bath & Beyond Inc. v. IBEX Constr., LLC, 52 A.D.3d at 414.

Consequently, the parties' anticipation of a release to be executed later does not render the agreement unenforceable, as the parties' intent to complete a more formal release does not amount an intent not to be bound by agreement. Kowalchuk v. Stroup, 61 A.D.3d at 123; Bed Bath & Beyond Inc. v. IBEX Constr., LLC, 52 A.D.3d at 414. See Trolman v. Trolman, Glaser & Lichtman, P.C., 114 A.D.3d at 618. Nowhere on the record did the parties express that they were not bound by their agreed settlement until they executed a more formal release or other agreement. Kowalchuk v. Stroup, 61 A.D.3d at 123; Bed Bath & Beyond Inc. v. IBEX Constr., LLC, 52 A.D.3d at 414.

III. NEITHER PLAINTIFF NOR DEFENDANTS MAY REVOKE OR RESCIND THE SETTLEMENT AGREEMENT OF DECEMBER 5, 2019.

"Stipulations of settlement are favored by the courts and not lightly cast aside." Hallock v. State of New York, 64 N.Y.2d 224, 230 (1984). See Simkin v. Blank, 19 N.Y.3d 46, 52 (2012); Harvey 1390 LLC v. Bodenheim, 96 A.D.3d 664, 664 (1st Dep't 2012); Chelsea 19 Assoc. v. James, 67 A.D.3d 601, 602 (1st Dep't 2009). Plaintiff may not rescind the settlement agreement without showing good cause that would invalidate a contract, such as fraud, collusion, or mistake. Hallock v. State of New York, 64 N.Y.2d at 230; Barclay v. Citibank, N.A., 136 A.D.3d at 551; Chelsea 19 Assoc. v. James, 67 A.D.3d at 602. For plaintiff to rescind the term sheet based on a mutual mistake, the mistake must be so material and substantial that it upsets the foundation

of the agreed exchange, such that the agreement expressed does not reflect a true meeting of the parties' minds. Simkin v. Blank, 19 N.Y.3d at 52-53; Da Silva v. Musso, 53 N.Y.2d 543, 552 (1981); Scotts Co., LLC v. Ace Indem. Ins. Co., 51 A.D.3d 445, 446 (1st Dep't 2008). See Warburg Opportunistic Trading Fund, L.P. v. GeoResources, Inc., 112 A.D.3d 78, 86 (1st Dep't 2013). Plaintiff may rescind the settlement agreement based on a unilateral mistake only if the mistake is coupled with defendants' fraud, misleading plaintiff such that the written agreement does not express the intended agreement. See, e.g., Barclay Arms v. Barclay Arms Assocs., 74 N.Y.2d 644, 646 (1989); Chimart Assoc. v. Paul, 66 N.Y.2d at 573; Greater N.Y. Mut. Ins. Co. v. United States Underwriters Ins. Co., 36 A.D.3d 441, 443 (1st Dep't 2007). Plaintiff must prove any mistake by clear and convincing evidence. Warburg Opportunistic Trading Fund, L.P. v. GeoResources, Inc., 112 A.D.3d at 85-86; EGW Temporaries, Inc. v. RLI Ins. Co., 83 A.D.3d 1481, 1482 (1st Dep't 2011); Atomergic Chemetals Corp. v. Hartford Acc. & Indem. Co., 193 A.D.2d 551, 551 (1st Dep't 1993); Lakshmi Grocery & Gas, Inc. v. GRJH, Inc., 138 A.D.3d 1290, 1292 (3d Dep't 2016). See Barclay Arms v. Barclay Arms Assocs., 74 N.Y.2d at 646.

Plaintiff demonstrates nothing more than an afterthought, a change of mind, or a subsequent recalcitrance, none of which is a basis for setting aside the settlement agreement. E.g., Barclay v. Citibank, N.A., 136 A.D.3d at 551; Popovic v. New York City Health & Hosps. Corp., 180 A.D.2d 493, 493 (1st Dep't 1992). See


Simkin v. Blank, 19 N.Y.3d at 55. She presents no evidence that any term in the settlement agreement was a mutual mistake or that this mistake was so material and substantial that the agreement no longer reflects a meeting of the minds, warranting rescission. Id. at 54-55; Da Silva v. Musso, 53 N.Y.2d at 552; Scotts Co., LLC v. Ace Indem. Ins. Co., 51 A.D.3d at 446; New York First Ave. CVS v. Wellington Tower Assoc., 299 A.D.2d 205, 206 (1st Dep't 2002). Plaintiff alleges none of the elements of fraud to support rescission based on a unilateral mistake. Barclay Arms v. Barclay Arms Assocs., 74 N.Y.2d at 646; Greater N.Y. Mut. Ins. Co. v. United States Underwriters Ins. Co., 36 A.D.3d at 443.

IV. CONCLUSION

For the reasons explained above, the court grants the motion by plaintiff's attorney to enforce the settlement agreement entered December 5, 2019. C.P.L.R. § 2104. Defendant, its insurers, and its attorney Weiner, Millo, Morgan & Bonanno, LLC, are released from liability for any claim by plaintiff arising from her injuries February 22, 2015, at 2101 49th Avenue, Queens County. C.P.L.R. § 5003-a(a). Since plaintiff's attorney agreed on the record December 5, 2019, to waive recovery of the disbursements the firm advanced in this action if defendant paid the settlement in two checks, and the attorney requests separate checks to plaintiff and to the firm, within 21 days after entry of this order, defendant shall pay \$67,000.00 to plaintiff and \$33,000.00 to her attorney. The court discontinues this action

with prejudice, subject to plaintiff's enforcement of the settlement agreement. C.P.L.R. §§ 2104, 5003-a(a).

DATED: March 31, 2019



LUCY BILLINGS, J.S.C.

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